

A Larger Conversation on Legal Deserts

BY BRIAN OTEN AND SAVANNAH PERRY



On August 31, 2023, the North Carolina State Bar and the Chief Justice's

Commission on Professionalism (CJCP) hosted a “Legal Desert Summit” at the State Bar building in Raleigh. Led by Chief Justice Paul Newby, State Bar President Marci Armstrong, and Jimbo Perry, co-director of the CJCP, the purpose of the event was to start a larger conversation on an issue that the State Bar has been studying for over a year. It’s an issue that is pressing, real, and

increasingly concerning if left unaddressed. The issue is the growth of “legal deserts” in North Carolina.

Generally, a legal desert is defined as a geographic area with a ratio of less than one lawyer for every 1,000 residents. The State Bar began studying this issue in June 2022, when then-State Bar President Darrin Jordan appointed a subcommittee to study the perception that many of our state’s smaller communities simply do not have enough lawyers. The impact of this issue

cannot be understated: less lawyers in the community leads to less access to legal services in the community; less access to legal services leads to less meaningful access to the justice system, and therefore less access to the rights and privileges afforded under law. The data on lawyer population supports this observation. Although North Carolina as a whole has a ratio of roughly 2.5 lawyers

per 1,000 residents, 48 of our 100 counties qualify as a legal desert. As one might imagine, these legal desert communities are typically rural communities, primarily located in the eastern and western parts of the state. So where are our state’s lawyers? As you might guess, the lawyer population in the state’s large, urban communities is exploding. At present, nearly 48% of active lawyers in



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North Carolina list an address of record with the State Bar in Wake or Mecklenburg Counties; digging further, some 63% of our state's active, in-state lawyers reside in one of five counties (Wake, Mecklenburg, Durham, Guilford, and Forsyth). Conversely, these five counties only account for approximately one-third of the state's overall population. Let that sink in: 63% of the lawyers in North Carolina are practicing in geographic areas that encompass only 33% of the total population. Meanwhile, many of our eastern counties have a ratio of less than 0.5 lawyers for every 1,000 residents. And, as the State Bar concluded early in the study, the communities that qualify as a legal desert are facing an access to justice issue that may only get worse.

As the State Bar explored and educated itself on this critical issue, we met with a variety of groups to learn not just about the impact of legal deserts, but also about existing efforts and potential solutions to encourage or facilitate increased legal services in our smaller communities. Throughout these conversations, two things became apparent: 1) many groups independently experienced the impact of legal deserts in similar ways, and 2) there are abundant opportunities for seemingly different groups to collaborate as we collectively attempt to craft effective solutions that increase the presence and availability of legal services in our small communities.

As a result, President Armstrong and Director Perry decided to call for a summit to bring all interested parties to the table and share their experiences, concerns, frustrations, success stories, and ideas on this prevalent topic. The Legal Deserts Summit was a huge success. Over 70 individuals attended the event, representing a variety of

perspectives from across our state and legal profession. Among those in attendance were members of the judiciary (both the appellate courts and the trial courts); a number of State Bar past-presidents and current councilors; district attorneys and public defenders/criminal defense lawyers; members of the legal services community, including representatives from Pisgah Legal Services, Legal Aid of North Carolina, and Indigent Defense Services; representatives from the state's law schools; law students; representatives from the North Carolina Bar Association and Lawyers Mutual; and an impressive assortment of practicing attorneys from small and large communities. Chief Justice Newby began the discussion with a poignant reminder that most lawyers entered the profession to serve individuals and our communities, and we must continue to ensure that we are serving all our communities across the state. Over the course of

four hours, attendees heard from some 30 speakers, each offering a different perspective or a different solution. Some of the summit's attendees highlighted the difficulties faced by our legal desert communities, ranging from the minimal number of lawyers available for constitutionally guaranteed criminal defense representation via court appointed counsel, to the difficulty affording or even locating a lawyer to do simple but necessary civil tasks. Others offered different solutions or structures to make legal services more available or more affordable in smaller communities. The following is a sampling of the experiences and ideas shared by various attendees from different practice areas:

- Many lawyers have decided to remove their names from the court-appointed lists, creating a shortage of court-appointed counsel that has caused the remaining lawyers on the lists to manage larger caseloads and the





potential to cause delay in the representation of their clients. And, as Chief Justice Newby often reminds, “Justice delayed is justice denied.” Mary Pollard, executive director of North Carolina’s Indigent Defense Services, shared with the attendees at the summit that 61 counties in North Carolina currently rely on court-appointed counsel to handle cases for indigent individuals within their communities. She provided a grim example from a rural county where there were no court-appointed lawyers available to receive an appointment for two weeks. While Ms. Pollard briefly touched on IDS’s long-term plan to open more public defender offices throughout the state, she also indicated that she was optimistic about utilizing help from law students.

- In the criminal practice area, elected District Attorney Ernie Lee for Onslow, Sampson, Duplin, and Jones Counties shared that the shortage of lawyers exists on both sides of the courtroom. Although there are 42 elected district attorneys in our state and approximately 677 assistant district attorneys, our prosecutorial districts are short about 11% of assistant district attorneys, equaling about 62 open positions. Mr. Lee shared that, in the last year, his legal staff has been down 25%. One solution he explored this past year was paid internships for second- and third-year law students who worked in district court. The internships were funded through the Administrative Office of the Courts. He indicated that it was a successful experiment for his office—as the students did excellent work—and successful for the students who decided they would like to become prosecutors.

- Dolph Mintz of Lenoir County spoke

about his idea to encourage competent lawyers who have decided to remove themselves from the court-appointed list to take the “Ten Client Challenge.” The goal is to challenge each lawyer to take ten cases for indigent clients, and thereby be a part of the solution. Mr. Mintz shared that he had spoken with a local judge within his district who understood that he and a handful of other lawyers were willing to take the challenge, and the judge met the opportunity with an appreciative, optimistic attitude towards these volunteer lawyers and appeared willing to consciously appoint volunteer lawyers to cases that would ensure these lawyers kept coming back to the challenge.

- Rich Gittings of Bull City Legal Services spoke about how his firm is working to provide services to individuals who do not qualify for free legal services through IDS or Legal Aid, but also cannot afford a lawyer’s regular rates for complete representation. The firm uses a sliding scale to determine how much each prospective client will be asked to pay for its services. The less an individual makes, the less they have to pay. Sarah Beth Withers of Inner Banks Legal Services also shared that she operates a similar sliding-scale firm in Washington, North Carolina. She explained that, because most sliding-scale firms are organized as 501(c)(3)s, her firm can determine the price point at which a client will pay based on the client’s income level. This model has, in her experience, generated tons of referrals because the referral sources know that the members of her community can afford their services, regardless of their income. She also explained that it is a sustainable business model with many benefits. These non-profit

law firms can operate from a mixed-money basis, which can include donations and grants in addition to the fees received from clients. The firm’s lawyers can also qualify for public service loan forgiveness.

- Mark Atkinson, the director of Incubator for Legal Practice and Innovation (ILPI), focuses on new business models for lawyers. ILPI is a 12-month program that offers support to these lawyers in the form of business management training, free access to LexisNexis, free access to CLIO case management software, free access to CLEs, strategic planning, and professional connections with other practitioners who may serve as mentors. He described that ideal candidates for the incubator are 1) newly licensed attorneys or 2) licensed attorneys with anywhere from two to ten years of experience looking for assistance starting their own firm.

State Bar President Marci Armstrong actively practices law in eastern North Carolina, and she has seen how the problem affects rural communities. Armstrong is not only interested in putting lawyers in rural communities to serve community needs, but her experience has inspired her to highlight the unique experiences that only a rural practice can provide to lawyers. Armstrong said, “I believe it’s important that we develop a long-term plan to encourage and assist lawyers to set up shop and become a part of the fabric of life in small, rural communities.” She added, “Those of us who practice in these communities know the benefits and joy of this path, but we must get the message and support out to our next generation of lawyers.”

CONTINUED ON PAGE 53

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Legal Deserts (cont.)

CJCP Co-Executive Director Jimbo Perry, who also practices Kinston, has traveled the state all year raising awareness of the issue and changing the conversation. In his remarks to the attendees, Perry shared that he believes living in and providing legal services in a “legal desert” may really be a legal oasis for many lawyers. He emphasized that the opportunity to practice in our small towns provides lawyers with the unique opportunity to enjoy greater flexibility and to build meaningful relationships with other members of their communities as a neighbor and as the community’s lawyer.

“Do you remember why you went to law school?” Perry asks. “Over the past eight months I have asked hundreds of law students and lawyers that question. Most of them say they want to be a lawyer to help people and make a difference in the world around them. A legal ‘oasis’ is a perfect place to help people with their cases and their lives, and to help our communities.” Perry adds, “I have also heard many students and lawyers say that the idea of work-life balance is a myth. Work-life balance is NOT a myth! We all have to decide how much of us

is for sale. Let’s consider investing our lives in an oasis where we can live out our priorities and at the end of the journey have no regrets.”

A key takeaway from the summit is the importance of service to all citizens of North Carolina: the legal profession is a service industry, and the various stakeholders showed a genuine commitment to ensuring that the legal needs of our rural communities continue to be served. To that end, the summit represents not the end, but the beginning of a larger and lengthier conversation.

The State Bar and the Chief Justice’s Commission on Professionalism intend to remain at the center of this conversation, facilitating connections and driving creative solutions for the protection and benefit of the public. If you’re interested in joining the conversation, contact Jimbo Perry or State Bar Executive Director Alice Mine. Additionally, if you are interested in watching the Legal Desert Summit, a full-length video recording is available on the State Bar’s YouTube channel (youtube.com/northcarolinastatebar). ■

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State Bar Annual Reports (cont.)

volunteers embody a genuine gratitude and humility seldom seen in the legal profession. They want others to be spared the pain they have experienced, and they expend a considerable amount of energy working toward that aim, carrying a message of hope in all they do for our program and their peers. I am blessed to call so many of them friends, and I am grateful for the work they do on our behalf. When it comes to our volunteers’ contributions to our program and its daily operation, the whole is truly greater than the sum of the parts.

Visit our website (nclap.org) to view the 2022-2023 NC LAP Annual Report. ■